Supreme Court, U.S.
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No. 94-1418

In The

Supreme Court of the United States

October Term, 1994

STATE OF MISSOURI ex rel. GEORGE A. CHIAVOLA and CONNIE SUE FLOTT,

Petitioners,

vs.

THE VILLAGE OF OAKWOOD, MISSOURI, WILLARD S. NORTON, JOHN W. GRIMWADE, MORRIS L. PHILLIPS, L. HOMER ORR, and J. JERRY SHIELDS

Respondents.

Petition For Writ Of Certiorari To The Missouri Court Of Appeals, Western District

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BRIEF IN OPPOSITION

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March 20, 1995

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QUESTIONS PRESENTED

1. Whether a village has acted arbitrarily, capriciously or irrationally by enacting a zoning ordinance without first creating a separate document entitled a "comprehensive plan" and thereby violating a landowner's rights under the due process clause of the Fifth and Fourteenth Amendments to the United States Constitution; and

2. Whether a zoning ordinance which does not amount to a physical invasion of a landowner's property still can be a violation of the federal substantive due process on the sole ground that a village passed a zoning ordinance without formalizing their planning in a separate document entitled a "comprehensive plan."

LIST OF PARTIES

Petitioners, George A. Chiavola and Connie Sue Flott are individuals who are the landowners of the property in question.

Respondents are the Village of Oakwood, Missouri located in Clay County, Missouri, and the five individual Trustees who were in office at the time the action was first begun: Willard S. Norton, John W. Grimwade, Morris L. Phillips, L. Homer Orr, and J. Jerry Shields.

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BRIEF IN OPPOSITION

TO THE HONORABLE SUPREME COURT:

The Respondents, The Village of Oakwood, Willard S. Norton, John W. Grimwade, Morris L. Phillips, L. Homer Orr, and J. Jerry Shields, respectfully request that this Court deny the Petition for Writ of Certiorari submitted by Petitioners, George A. Chiavola and Connie S. Flott.

OPINIONS AND ORDERS BELOW

The Missouri Court of Appeals, Western District, reversed the decision of the of the Circuit Court of Clay County, Missouri which granted Petitioners' Motion for Partial Summary Judgment. The Missouri Court of Appeals decision is reported at 866 S.W.2d 74 and is reproduced in the Appendix to Chiavola and Flott's Petition for Certiorari. (App. A1-19). Clay County Circuit Court Judge Russell found that the zoning ordinance (Ordinance No. 10) of the Village of Oakwood was unconstitutional on its face because it was not adopted pursuant to a separate comprehensive plan. The Circuit Court Order is reproduced in the Appendix to Chiavola and Flott's Petition for Certiorari. (App. A20-21).

Following issuance of the Missouri Court of Appeals Opinion, Chiavola and Flott moved for a rehearing or for a transfer to the Missouri Supreme Court. The Missouri Court of Appeals denied Chiavola and Flott's request. The denial of both motions by the Missouri Court of Appeals is reproduced in the Appendix to Chiavola and Flott's Petition for Certiorari. (App. A22). Thereafter, Chiavola and Flott filed a motion to transfer directly to the Missouri Supreme Court which also was denied. The denial of that motion by the Missouri Supreme Court is reproduced in the Appendix to Chiavola and Flott's Petition for Certiorari. (App. A23).

STATEMENT OF JURISDICTION

The jurisdiction of this court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

In addition to those constitutional and statutory provisions cited by the Petitioners, Respondents submit the following to this Court:

Village of Oakwood Ordinance No. 10 (excerpts reproduced in Respondents' Appendix).

Missouri Statute § 89.310:

89.310 Municipality may adopt city plan and appoint commission

Any municipality in this state may make, adopt, amend, and carry out a city plan and appoint a planning commission with the powers and duties herein set forth.

STATEMENT OF THE CASE

I. FACTUAL BACKGROUND

The Village of Oakwood is one of four small villages grouped together and located in the Kansas City metropolitan area. The Village was and is a small bedroom community around which the cities of Gladstone and Kansas City have grown during the last forty years. All of the 80 lots within the Village have been developed with single family residential homes. The residents of the Village of Oakwood have immediate access to a variety of goods and services at nearby businesses. In 1955, the Village Trustees, who are the elected officials, passed a zoning ordinance (Ordinance No. 10) which platted all of the land as large residential lots and limited the use of that land within the Village to single family residential. While the zoning ordinance has been amended from time to time, the restriction of single family residential has remained.

The Village of Oakwood only employs one person, the Village Clerk. All of the Trustees are elected officials who receive no salary. The Village has no police force or fire department but contracts for those services with neighboring government entities. The Village has, in addition to its trustees, persons elected to serve on the Board of Zoning Adjustment to provide full and complete hearings to residents who wish to raise zoning issues associated with their property.

In 1981, well after the Village was fully developed and the land surrounding the Village had developed to the stage

it is today, Petitioners George Chiavola and Connie Flott purchased a house on six acres fronting on North Oak Trafficway. That home on six acres was one residential lot. Petitioners were fully aware at that time of their purchase the land was zoned single family residential and was part of a small quiet residential village.

In 1988, the Village of Oakwood hired a land planning expert to review the zoning ordinances, land plats and the appropriateness of the land uses within the Village. Mr. Kellenberg, as part of his comprehensive written report, concluded that an appropriate use for the land within the Village and which abuts North Oak Trafficway was to keep all of the land zoned a single family residential. After full consideration of the current circumstances, the wishes of the residents and the expert opinion provided to them, the Trustees chose to continue to keep the use all of the land within the Village as single family residential.

In 1990, Petitioners sought to have their property rezoned commercial for any general commercial use. They filed a petition to have their land rezoned commercial. This petition was given a public hearings before Zoning Commission. Thereafter, Chiavola and Flott sought an appeal of that decision as well as a use variance before the Board of Zoning Adjustment. A public hearing was held for both the appeal and the use variance. At the conclusion of each hearing, and after due deliberation, the respective Village government bodies denied the Petitioners application to rezone, the appeal of application to rezone and the request for a use variance.

II. COURTS BELOW

Petitioners filed a multi-count petition in the Circuit Court of Clay County, Missouri. During the course of the lower court proceeding, both Petitioners and Respondents filed motions for partial summary judgment. In a hearing on both motions for partial summary judgment before the Honorable David Russell, the trial court sustained Petitioners' Motion and found that Ordinance No. 10 was unconstitutional on its face because it was not adopted pursuant to a separate comprehensive plan in accordance with Missouri statutes.[1]

On August 9, 1994, the Missouri Court of Appeals reversed the trial court's judgment that the Village's zoning ordinance was unconstitutional on its face. The Missouri Court of Appeals specifically found that the zoning ordinance of the Village of Oakwood did not violate the substantive due process clauses of the Fourteenth Amendment to the United States and Missouri Constitutions. The Missouri Court of Appeals divided the Constitutional analysis into three categories; the reasonableness of the zoning ordinance, the comprehensive single use zoning and the comprehensive plan. In addition, the Court of Appeals found that the zoning ordinance was not violative of the Missouri Statutes regarding a comprehensive plan.

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[1]Petitioners have attempted to argue that the Village of Oakwood is required by statute to adopt a "city plan" and cites this Court to § 89.340. It should be noted that such statute is not mandatory but discretionary. See § 89.310. The Village of Oakwood has chosen not to adopt a city plan.

Petitioners thereafter sought a Rehearing before the Missouri Court of Appeals or to Transfer to the Missouri Supreme Court. On October 4, 1994, the Missouri Court of Appeals denied both motions. Petitioners filed a separate Motion to Transfer directly with the Missouri Supreme Court. And on November 22, 1994, the Missouri Supreme Court denied the Petitioners' Motion for Transfer.

SUMMARY OF THE ARGUMENT

The Village of Oakwood's zoning ordinance does not violate Petitioners' rights under the due process clause of the Fifth and Fourteenth Amendments to the United States Constitution. A zoning ordinance which was not adopted pursuant to a separate document entitled a "comprehensive plan" does not make the adoption of the zoning ordinance arbitrary, capricious or irrational.

The nature and extent of rezoning property within a village is essentially a local matter which does not involve the Takings Clause of the Fifth and Fourteenth Amendment to the Constitution. The Village of Oakwood did not pass a zoning ordinance which amounted to a taking; to do so, there must be substantially more intrusion than a simple single family residential zoning restriction. Here, there was no more.

REASONS FOR DENYING THE PETITION

I. A village zoning ordinance limiting land use within the village to single family residential but which was not adopted pursuant to a separate document entitled a "comprehensive plan" does not give rise to a *per se* claim of denial of substantive due process of the Federal Constitution.

The Missouri Court of Appeals held that the zoning ordinance of the Village of Oakwood was not facially unconstitutional. The essence of the Petitioners' claim was that the Village failed to adopt a separate document entitled a "comprehensive plan" before it adopted the zoning ordinances for the Village. Petitioners have wrongfully concluded that because the Village had no separate document setting forth the length and breath of its planning, no planning of any kind was ever accomplished. Such an assumption was addressed by the Court of Appeals[2] and yet the Petitioners still cling to their misguided belief that no planning ever took place by the Village Trustees.

At the time the ordinance was first adopted, the Village of Oakwood drafted a plat laying out the approximate 80 lots with the vision that the entire Village would be filled with single

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[2]Judge Lowenstein found that the Village of Oakwood had a comprehensive plan which was evidenced by the preamble to the ordinance, the appointment of zoning commissions, public hearings, recommendations made and a final record made. *State ex rel. Chiavola v. Village of Oakwood*, *supra* at 94. Substantial planning had been done prior to the enactment of Ordinance No. 10.

family homes. In turn, they drafted and adopted a zoning ordinance which restricted the use of the land to single family lots to assure that the Village would continue to be a bedroom community to the City of Kansas City. Over the years, the zoning ordinances were modified from time to time after consideration by the trustees as to the needs of the residents. In 1988, the Village hired a land planning expert, Richard Kellenberg, to review the zoning ordinances and land usage within and without the Village. Mr. Kellenberg submitted a report to the Village suggesting that an appropriate use for the land fronting on North Oak Trafficway was to maintain it as single family residential. After due deliberation, the Trustees believed that the most beneficial zoning for all residents of the Village was to maintain the zoning as it had been -- single family residential.

Obviously, the planning necessary for a small bedroom village is substantially less than that necessary for a larger urban cities with a wide variety of needs for its residents. The Missouri Court of Appeals strictly limited its decision in this case to the facts with which it was presented. *State ex rel. Chiavola v. Village of Oakwood*, 886 S.W.2d 74 (Mo. App. 1994).

> This opinion does not stand for the proposition that a municipality, no matter what its size, does not have to adopt a comprehensive plan separate from the zoning ordinance. What was sufficient for Oakwood in this case, an ordinance which provided for a single land use, and which evidenced future plans for the

> community, will not necessarily suffice for all larger towns or cities.

Id. at 92. The decision before the state courts does not have the far reaching implications that Petitioners attempt to claim. Here, it was a decision clearly limited on its face to the facts involving a small bedroom community which sought to remain a small residential bedroom community.

Petitioners seek to have this Court review a clearly local zoning issue on the basis that the Village's zoning ordinance, on its face, is arbitrary and unreasonable that it amounts to a taking under the Takings Clause of the Fifth Amendment of the United States Constitution. However, Petitioners' only possible attack on the Village's zoning ordinance was its lack of a separate comprehensive plan. In support of their argument that a zoning ordinance without a separate comprehensive plan violates their substantive due process rights, Petitioners cite the Court to two of its recent decisions, *Lucas v. South Carolina Coastal Council*, 112 S.Ct. 2886 (1992) and *Dolan v. City of Tigard*, 114 S.Ct. 2309 (1994).

In *Lucas*, the owner of beachfront property challenged a South Carolina law which prevented him from erecting any permanent habitable structures on his land. This Court found that if a plaintiff can show that the state's regulation has forced him to sacrifice *all* economically beneficial uses of his property in the name of the common good does result in a taking. However, Justice Scalia was quick to point out that a regulation which did not reduce the landowner's property to zero did not

result in a taking. *Lucas, supra* at 2895 n8. In the case at bar, Petitioners have not and cannot argue that the Village's zoning ordinance which restricts the use of Petitioners' property to single family residential has deprived him of all economically beneficial use of their property. As such, the zoning ordinance of the Village of Oakwood does not remotely amount to a "taking" of Petitioners' property.

Similarly in *Dolan*, the State of Oregon passed a state law which denied the landowner a building permit unless she gave up a portion of her land for the public good. That law required all Oregon cities to adopt new comprehensive land use plans that were consistent with the state-wide planning goals, including storm drainage improvement. The City of Tigard thereafter adopted a comprehensive plan and codified it in its Code. The landowner sought a building permit to expand her business by building new building and parking lot on her land. Commission required that she dedicate the portion of her property lying within the floodplain for improvement of a storm drainage system along the creek and a 15-foot strip for pedestrian pathway. The landowner brought suit claiming the zoning laws amounted to a taking of a portion of her property for which she should be compensated.

This Court found that if the condition of a permit amounts to a total taking of a portion of the landowner's property, the city must prove a reasonable relationship or nexus between the reason for the permit and the use to which the property is being made. In other words, the required dedication must be related both in nature and extent of the

impact of the proposed development. After a review of the city's proffered reasons, this Court found that there was no reasonable relationship between the demands of the city under the permit and the specific floodplain and traffic concerns. *Id.* at 2322.

However, in arriving at that decision, Justice Renquist noted that generally land use regulations do not effect a taking if they substantially advance a legitimate state interest and do not deprive an owner of all economically viable uses of his land. *Id.* at 2316, *quoting, Agins v. Tiburon*, 447 U.S. 255, 260, 100 S.Ct. 2138, 2141, 65 L.Ed.2d 106 (1980). This Court has differentiated between "taking" cases and general zoning cases. Justice Renquist stated in *Dolan* that:

> The sort of land use regulations discussed in the cases just cited[3], however, differ in two relevant particulars from the present [*Dolan*] case. First, they involved essentially legislative determinations classifying entire areas of the city, whereas here the city made an adjudicative decision to condition petitioner's application for a building permit on an individual parcel. Second, the conditions imposed were not simply a limitation on the use petitioner might make of her own parcel, but a requirement that she deed portions of the

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[3]*Euclid v. Ambler Realty Co.*, 272 U.S. 365, 47 S.Ct. 114, 71 L.Ed. 303 (1926); *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 365, 47 S.Ct. 114, 71 L.Ed. 322 (1922); *Agins v. Tiburon, supra.*

> property to the city. In *Nollan, supra*, we held that governmental authority to exact such a condition was circumscribed by the Fifth and Fourteenth Amendments. Under the well-settled doctrine of "unconstitutional conditions" the government may not require a person to give up a constitutional right -- here the right to receive just compensation when property is taken for a public use -- in exchange for a discretionary benefit conferred by the government where the property sought has little or no relationship to the benefit.

Id. at 2316. The facts of the case at bar have both of the characteristics which form the basis for the distinction by Justice Renquist: 1) the Village of Oakwood's zoning ordinance involves essentially legislative determinations classifying the entire area of the Village, and 2) the zoning ordinance is simply a limitation on the use Petitioners might make of their own property. Thus, this case does not present facts which would arise to the level of a "taking."

Neither the decision in *Lucas* nor the decision in *Dolan* support a finding that when a small village adopted a zoning ordinance without a separate comprehensive plan document that a landowner within that village has suffered a categorical or *per se* violation of his property rights. Nothing in either of those cases would suggest that the Petitioners have been so deprived.

II. There are no conflicting opinions existing between the various federal circuits which would be addressed by granting certiorari of a state appellate court decision which was extremely and narrowly limited to the facts of the zoning ordinance of a small village.

Petitioners have suggested to this Court that the federal circuits are "in hopeless disarray regarding the proper standard to be applied to substantive due process challenges of zoning decisions." By deciding this case, this Court would not address the so-called conflict between the various circuits. Obviously the case at hand is not an appeal from the any of the federal circuit court of appeals decisions. No standard applied by any federal circuit would be addressed by reviewing the decision rendered by the Missouri Court of Appeals in this case.

With relative uniformity, the various federal circuits have addressed the issue of substantive due process as it relates to a legislative act such as a zoning ordinance. The issues raised by Petitioners are not addressed by the present case. First, the case at hand involves a clearly legislative act and not an administrative act.[4] While some of the federal circuits make a distinction between legislative and administrative acts, they do so in the context of **procedural due process** grounds rather than **substantive due process** grounds. *See, e.g., Pearson v. City*

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[4]Contrary to the Petitioners' assertion in their brief, the single family residential zoning was in place in 1981 when they purchased their property within the Village of Oakwood. They have always approached this lawsuit as an application to rezone their property from residential to commercial.

of Grand Blanc, 961 F.2d 1211, 1220 (6th Cir. 1992). Even if one were to suggest that the action in the present case was administrative, the "plaintiff must show that the [village] has been guilty of arbitrary and capricious action in the strict sense, meaning 'that there is no rational basis for the . . . [administrative] decision.'" *Id.* at 1221 *quoting Steven v. Hunt*, 646 F.2d 1168, 1170 (6th Cir. 1981). A single family residential zone for a small bedroom community which has been maintained as such over the years demonstrates a rational basis for the zoning ordinance.

The review of state zoning regulation becomes even narrower where such zoning legislation is under review by a federal court.

> Where *property interests* are adversely affected by zoning, the courts generally have emphasized the breadth of municipal power to control land use and have sustained the regulation *if it is rationally related to legitimate state* concerns and does not deprive the owner of economically viable use of his property . . .

Schad v. Borough of Mount Ephraim, 452 U.S. 61, 68 (1981). It is difficult to conceive how the present case can be anything other than the legislative action by the Village of Oakwood in adopting and applying their zoning ordinance. Such zoning affects all of the property within the Village. While the Petitioners argue that the action in denying was not legislative but administrative they do so in an attempt to isolate their

property from the rest of the subdivision by claiming the ordinance affects a relatively small number of persons. Such is not true. The ordinance applies to the entire Village. It is only the Petitioners who do not want that zoning limitation applicable to them. Under Petitioners' argument, every zoning challenge would be administrative since the unwanted effect of the ordinance applies only to that landowner challenging the zoning regulation.

Nevertheless, under either approach, the present case involves a very small village which has zoned all of the property within the village as single family residential. No evil motive or irrational reason has been advanced by the Petitioners for the action by the Board of Trustees in maintaining this zoning over the years. Their only attack is that the zoning ordinance was not adopted and maintained pursuant to a separate comprehensive plan. There is no constitutional requirement that all zoning regulations must be adopted pursuant to a separate comprehensive plan. Further, Petitioners must argue that this failure to have a separate comprehensive plan rises to a level of depriving them of substantive due process. Clearly, this challenge does not even remotely rise to such a level.

There is no conflict in those cases which simply challenge the city's zoning regulations but do not amount to a "taking" of the landowner's property. This Court has set forth the proper standard to be applied in substantive due process claims in zoning cases which do not amount to a "taking." This question was first addressed in *Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926) which upheld a local zoning ordinance which

restricted the commercial development of a landowner's property. Despite the alleged diminution in value of the owner's land, this Court held that the zoning laws were facially constitutional in that they bore a substantial relationship to the public welfare and their enactment inflicted no irreparable injury upon the landowner.

Then, in *Agins v. Tiburon*, 447 U.S. 255 (1980), this Court addressed the landowner's argument the city's zoning ordinance that prohibits all development of their land effects a taking under the Fifth and Fourteenth Amendments to the Constitution. Again, it was held that zoning ordinances which substantially advance legitimate government goals are a proper exercise of the city's police power. One of the governmental purposes which has been recognized by this Court is to protect a municipality's residents from the ill effects of urbanization. *Penn Central Transp. Co. v. New York City*, 438 U.S. 104 (1978); *Village of Belle Terre v. Boraas*, 416 U.S. 1 (1974).

In the case at bar, the Missouri Court of Appeals found that the zoning ordinance of the Village of Oakwood was a proper exercise of the Village's police power. Judge Lowenstein specifically ruled that the objectives of promoting the health, safety, morals and general welfare of the residents of Gladstone are served by the single-use zoning of its ordinance. *State ex rel. Chiavola v. Village of Oakwood*, *supra* at 82. Thus, no constitutional claim arises simply because a landowner wishes to have his property zoned as commercial rather than residential.

In addition, no evidence exists in this case to support a claim that Petitioners have lost all reasonable value of their property due to the residential zoning which existed at the time they purchased their property. The Petitioners are free to develop their property in accordance with the current zoning restrictions or live in the home which they purchased. Since there has been no diminution in value, there can be no taking.

Assuming for the sake of argument that even if the zoning ordinance of the Village of Oakwood did result in a reduction in the value of Petitioners' property, if the zoning ordinance is a legitimate exercise of the city's police power, then the ordinance will be found to be constitutional. *Village of Belle Terre*, *supra* at 5. It is only where the exercise of that power results in taking all economically viable use of the property that the power may be illegitimate. *See*, *Lucas v. South Carolina Coastal Council*, *supra* at 2898; *Dolan v. City of Tigard*, *supra* at 2315.

III. This case does not present any question of national importance.

As this Court has consistently ruled, zoning regulations are a matter of local concern. The statutes from many of the states are as varied as the land within those states. It is merely wishful thinking by Petitioners that a trend has been established throughout the nation that all cities and villages must adopt a separate comprehensive plan for all zoning regulations. Each state has adopted its own unique statutory requirements which

apply to the cities and villages within that state. Virtually all of the cases cited by Petitioners turn on the particular statutory language of the enabling statutes passed by their respective legislatures.

More importantly, regardless of whether other state courts have required a particular city to adopt their zoning regulations as part of a master plan, these state cases do not address the issue of whether all zoning regulations -- no matter what the enabling statutes require -- must be adopted pursuant to a separate comprehensive plan in order to pass constitutional muster. Petitioners seek to have this Court impose upon the State of Missouri and the other forty-nine states a judicially created requirement that all cities, no matter what size and regardless of their statutory scheme, must adopt a separate comprehensive plan or their zoning regulations will be ruled unconstitutional. Substantive due process was never intended to amount a judicial fiat dictating the nature and extent of the planning in which a given city must engage. The overriding principal first established in *Euclid* is most appropriate here. A court must not set aside the determination of public officers in establishing zoning regulations unless it is clear that their action has no foundation in reason and is a mere arbitrary or irrational exercise of power having no substantial relationship to the public health, morals, safety, or welfare. *Euclid v. Ambler Co.*, supra at 395.

CONCLUSION

The decision of the Missouri Court of Appeals represents a proper ruling of the reasonableness of the zoning ordinances of the Village of Oakwood. Petitioners have wholly failed to establish any basis for granting a writ of certiorari. For the reasons set forth herein, the Petition for a Writ of Certiorari to the Missouri Court of Appeals, Western District should be denied.

Respectfully submitted,

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March 20, 1995

APPENDIX-- EXCERPTS OF ORDINANCE NO. 10 THE ZONING ORDINANCE FOR THE VILLAGE OF OAKWOOD, MISSOURI

ORDINANCE NO. 10

AN ORDINANCE TO REGULATE AND RESTRICT IN THE INCORPORATED AREA OF THE VILLAGE OF OAKWOOD THE LOCATION AND USE OF BUILDINGS, STRUCTURES, AND LAND FOR RESIDENCES ONLY: TO REGULATE AND LIMIT THE HEIGHTS OF BUILDINGS HEREINAFTER ERECTED OR ALTERED: TO REGULATE AND DETERMINE THE SIZE AND AREA OF YARDS, COURTS AND OTHER OPEN SPACES: TO REGULATE AND LIMIT THE DENSITY OF POPULATION: TO ESTABLISH A SINGLE RESIDENTIAL DISTRICT WITH THE SAME BOUNDARIES AS THE INCORPORATED VILLAGE: TO PROVIDE FOR ITS INTERPRETATION AND THAT OF OTHER LAWS OR COVENANTS, ETC. RELATING TO THE SAME OR SIMILAR SUBJECTS: TO PROVIDE FOR AMENDMENTS TO THIS ORDINANCE: TO PROVIDE FOR ITS ENFORCEMENT IN PRESCRIBING PENALTIES FOR THE VIOLATION OF ITS PROVISIONS: TO PROVIDE FOR A BOARD OF ADJUSTMENT AND A ZONING COMMISSION AND DEFINING THEIR POWERS AND DUTIES: TO PROVIDE FOR PERMITS: TO PROVIDE THAT IF ANY CAUSE, SENTENCE, SECTION PARAGRAPH OR PART OF THIS ORDINANCE SHALL BE HELD INVALID: SUCH INVALIDITY SHALL NOT

INVALIDATE THE REMAINDER: TO PROVIDE FOR THE REPEAL OF ALL OTHER ORDINANCES OR PARTS OF SUCH ORDINANCES IN CONFLICT WITH THIS ORDINANCE.

WHEREAS, For the purpose of promoting health, safety, morals , and the general welfare of the Village of Oakwood, Clay County, Missouri, the Board of Trustees of said Village wish to secure the benefits of Zoning rules, restrictions and regulations under the authority and provisions of Chapter 89, RSMO 1949, and

WHEREAS: at a meeting of the Board of Trustees of said Village, held on January 31, 1955, said Board of Trustees appointed a Zoning Commission, composed of the following named persons: Dr. F. VonBohland, Russell Carpenter, William Woods, L.P. (John) Munger, and L.W. Parrish to meet and recommend the boundaries of the various original districts and appropriate regulations to be enforced therein, and

WHEREAS, said Zoning Commission, at a meeting held on February 4, 1955, in said Village, considered a zoning ordinance proposed to be enacted, and made its preliminary Report to the Board of Trustees that same be enacted, and said Zoning Commission ordered that a public hearing be held before said Zoning Commission on February 28, 1955, and that fifteen (15) days notice be given thereof by publications of said notice in the North Kansas City (Mo.) Press-dispatch, and

WHEREAS, said notice was duly published on February 10, 1955, (the affidavit of which is attached to this page of this Ordinance) and said meeting was duly held on February 28, 1955, at which meeting said Zoning Commission did consider said proposed ordinance and hear all who appeared in relation thereto, and

WHEREAS, said Zoning Commission did submit its final report thereon, and recommended to the Board of Trustees that said proposed ordinance be enacted, and

WHEREAS, said Board of Trustees, at the meeting held on March 8, 1955, received said final report from said Zoning Commission and ordered a public hearing to beheld before the said Board of Trustees, on March 28, 1955, and that fifteen (15) days notice be given thereof by publication of said notice in the North Kansas City (Mo.) Press-Dispatch, and

WHEREAS, the proofs of notices aforesaid and the reports of said Zoning Commission have been filed with the Village Clerk as public records, and

WHEREAS, all preliminary proceedings necessary to the passage of such Ordinance have been complied with and strictly followed,

NOW THEREFORE BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE VILLAGE OF OAKWOOD AS FOLLOWS:

Section 1. SHORT TITLE. This ordinance shall be known and may be cited as the Zoning Ordinance of the Village of Oakwood.

Section 2. RESIDENTIAL DISTRICT. For the purpose of regulating and restricting the use of land and the erection, construction, reconstruction, alteration, repair, relocation, or maintenance of buildings or structures and use of land and lots, the incorporated territory of the Village of Oakwood, Missouri, is hereby established and declared to be one residential district.

Section 3. DISTRICT BOUNDARIES. The boundaries of the district are hereby established and are hereby designated as the existing boundaries of the Village of Oakwood as described in detail in the incorporation of said Village, and are hereby made as much a part of this Ordinance as if the same were set forth in full herein. It shall be the duty of the Zoning Commission to keep on file in its office an authentic copy of all maps, and all changes, amendments, or additions thereto.

Section 4. BOARD OF ADJUSTMENT. A Board of Adjustment is hereby established in accordance with the provisions of the Zoning Act and shall have such supervisory and appellate powers as made and provided.

BYLAW: The word "Board" when used in this Ordinance shall be construed to mean the "Board of Adjustment," and the work "Trustees" when used in this Ordinance shall be

construed to mean the "Board of Trustees." The Board shall be appointed by the Trustees and shall consist of five (5) freeholders. The membership of the first Board appointed shall serve respectively: one (1) for one (1) year, one (1) for two (2) years, and (1) for three (3) years, one (1) for four (4) years and one (1) for five (5) years each. Members shall be removable for cause by the Trustees upon written charges and after pubic hearings. Vacancies shall be filled by the Trustees for the unexpired term of any members whose term becomes vacant. The Board shall elect its own chairman, and shall adopt rules of procedure consistent with the provisions of this Ordinance and the Zoning Act.

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Section 7. USE REGULATIONS. No building, structure, land or premises shall be used, and not building or structure shall be hereinafter erected, reconstructed, or altered, except for one or more of the following uses:

1. Dwellings, one family.
2. Churches and community buildings.
3. Public parks, playgrounds and public recreation buildings.
4. The use of buildings or premises for such public utility services are as authorized or ordered by the Public Service Commission or by permit of the County Court, and excluded from jurisdiction of the Zoning Commission by the Zoning Act.

5. Accessory uses, customarily incident to the above uses and located on the same lot therein, not involving the conduct of a business or industry.

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Section 19. EFFECT: This Ordinance shall take effect from and after its passage, and notice of said ordinance shall be given by publishing the same in the North Kansas City News-Dispatch (Mo.) a newspaper of general circulation in this Village, in the issue thereof dated April 4, 1955.

Passed this 28th day of March, 1955.